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KERRY HEALEY
LT. GOVERNOR

ROBERT C. HAAS
SECRETARY

The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-148
70 Beacon Street
Somerville, MA

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Somerville Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by The Thirsty Scholar Pub, LLP (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 70 Beacon Street, Somerville, MA.

B) Procedural History

By written notice received by the Appellant on October 3, 2005, the City of Somerville Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L. c. 148, s.26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 70 Beacon Street, Somerville, MA. The Appellant filed an appeal of said order on November 15, 2005. The Board held a hearing relative to this appeal on May 10, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Gerald Brennan, Co-Owner of The Thirsty Scholar Pub, Sharmili P. Das, Esq. and Heather Merrill, Esq., attorneys for the Appellant. Deputy Chief James C. Hodnett was the representative of the Somerville Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Stephen D. Coan, Chief Thomas Coulombe, Alexander MacLeod, Peter Gibbons, and John J. Mahan. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Somerville Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½ ?

D) Evidence Received

1. Application for Appeal by Appellant
2. Written Statement in Support of Application for Appeal (Appellant's Exhibit "A")
3. Additional Submission by The Thirsty Scholar Pub
 - A. Photographs of Old Facility
 - B. Photographs of Construction
 - C. Certificate of Inspection (issued 12/14/05)
 - D. City of Somerville Liquor License
 - E. Photographs of Updated Facility
 - F. Menu
 - G. Photographs of Facility / Menu Items
 - H. Correspondence from Pie-Town Production to highlight facility
 - I. Letter from Mass. Restaurant Association in support of facility
4. Order of Somerville Fire Department
5. Notice of Hearing to Appellant
6. Notice of Hearing to Somerville Fire Department
7. Packet of additional materials from Somerville Fire Department (7A-7D)
8. Fire Department Photos (A-H)

E) Subsidiary Findings of Fact

- 1) By notice received by the Appellant on October 3, 2005, the Somerville Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 70 Beacon Street, Somerville, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2. This building is used by an establishment that operates under the name of The Thirsty Scholar Pub, LLC, a private, for profit organization.
- 2) According to the current Certificate of Inspection issued on 12/14/2005, the building department listed the facility's capacity as 125 persons throughout the facility and does not list separate capacity limits for any bar area and dining room. Said Certificate of Inspection indicates the use group of this building as "A-2".
- 3) Photographs submitted by both parties depict a wide-open area with several brick faced walls, dark wood finishing, and a substantial fully stocked bar with approximately 16 bar stools. The open area consists of a variety of seating arrangements including high tables with bar type stools, in addition to several wooden tables and booths with chairs and benches. There are numerous signs, ornaments, artwork and flags displayed within the establishment that promote various types

of alcoholic beverages. There is currently no physical or operational separation within the facility which establishes any delineation between a “bar” portion and a “dining area”. The photographs depict a front exterior of the building consisting of dark wooden facing with multiple windows and door panes, several signs advertising the name of the establishment “Thirsty Scholar Pub” and three prominent signs advertising the availability of “Bass Ale”.

- 4) The Appellant contends that the establishment is principally used as a restaurant and is therefore specifically exempt from the sprinkler provisions of M.G.L. c.148, s.26G1/2. Furthermore, he indicated that the percentage of liquor sales compared to food sales is 50% food and 50% liquor. The establishment serves full meals on a daily basis. Menus feature the availability of a wide assortment of full course dinner meals, include breakfast and lunch items. The “bar area” is also used for the service of meals. However, a customer can patronize this bar area and other areas of the establishment for the purchase of liquor only at any time during the hours of operation.
- 5) The restaurant holds an entertainment license, but does not currently feature live musical entertainment. The establishment does have a jukebox and presents short story and poetry reading sessions on a regular basis. The establishment holds a full liquor license, which allows “all forms of alcoholic beverages to be drunk on the premises” until 1:00 a.m., seven days a week. The facility is open daily from 10:30 a.m. to 1:00 a.m. On Monday through Wednesday nights the kitchen is closed at 10:00 p.m. while alcoholic beverages continue to be served until last call at 1:00 a.m. On Thursday through Sunday nights, full meals are prepared until 10:00 p.m. and a more limited late night menu is available until 12:00 midnight.
- 6) The fire department issued the Order to install sprinklers based upon the overall building capacity, the existence of a full bar area and liquor sales. The representative of the fire department contests the Appellant’s characterization of the establishment as a restaurant and indicated that the owner of the facility had previously indicated that food sales were 40% of the overall business. He also indicated that the establishment’s “bar” like atmosphere, low light levels, classification of the building as an “A-2” establishment and the existence of an entertainment license indicates that this is the type of establishment within the scope of M.G.L. c. 148, s.26G1/2.
- 7) Although the current Certificate of Inspection indicates an A-2 use group classification which legally allows nightclub activities, Appellant believes that the facility is a restaurant and that the classification was never properly changed. He indicated that he is in the process of initiating a change to the classification to an A-3 use group to reflect that the facility as a restaurant.
- 8) The appellant indicated that he has received estimates to install sprinklers, which ranged from \$50,000 to \$60,000 to install a sprinkler system on the first floor level and in the basement. He indicated that this cost will create an unreasonable hardship on the business. Upon inquiry by the Board, appellant could not explain the reason(s) for such an apparently high installation estimate and did not submit documentation to support the stated cost estimates. Appellant did not request the board to consider any modified or limited installation options.
- 9) The Board notes that as of the date of the hearing, the appellant has filed sprinkler installation plans in a timely manner in accordance with the statute, c. 304 of the Acts and Resolves of 2004, s.11.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) The Inspection Certificate issued for this establishment on 12-14-05 indicates that the occupancy is classified as an “A-2” assembly occupancy with a legal capacity of 125 persons. The subject building is considered a public assembly with a capacity of 100 persons or more. Additionally, the establishment holds an entertainment license. However, it appears that the only entertainment currently featured is in the form of a music juke box, several televisions and live poetry reading events. The legal classification of this establishment as an “A-2” assembly occupancy by the City of Somerville Building Department is significant. Under the provision of the State Building Code, 780 CMR, such a classification includes establishments that are “ designed for occupancy as dance halls, nightclubs and for similar purposes” (see 780 CMR 303.3). Under 780 CMR, restaurants other than nightclubs, are classified within the A-3 use group (see 780 CMR 303.4). The A-2 classification is an important factor in determining whether this establishment is subject to the sprinkler requirements of M.G.L. c. 148, s. 26G1/2. However, this classification alone is not the sole factor that this Board will look at in making a determination. In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law, c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire which took place in February, 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;

- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department. Some of these particular characteristics, such as entertainment by a live band, recorded music generating above normal sound levels and a specific area designated dancing, may not necessarily exist in certain establishments that are considered a “bar”. Nevertheless, the provisions of M.G.L. clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

- 4) In its 1-10-05 memorandum the Board acknowledged the existence of establishments that may feature characteristics of both a restaurant and a bar or nightclub. In determining whether or not such “combination” establishments are subject to the provisions of M.G.L. c.26G1/2 this Board look at such common sense factors such as:

- a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
- b) Does the establishment provide a bar, bar seating, bar standing and a bar tender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
- c) Does the bar and bar seating area have the ability to expand into the dinning area to accommodate special entertainment activities or increased capacity/density.
- d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
- e) Is live or recorded music provided for dancing purposes or for a viewing audience? (does not include background dinner music)?
- f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
- g) Based upon the establishment’s name, décor, atmosphere, does a customer expect a bar or nightclub type establishment?
- h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
- i) Does the establishment have an entertainment license?

- 5) Based upon the evidence provided at the hearing, this establishment currently serves meals on a daily basis. However, in looking at the characteristics as a whole, it also features substantial characteristics typical of a bar:

- a. The establishment is currently classified as an A-2 occupancy and has been issued an entertainment license for this purpose. Therefore the establishment is legally capable and designed to provide live entertainment and feature related nightclub activities.
 - b. The establishment features later than average operating hours.
 - c. The establishment holds a full liquor license and features bar service, bar seating and a bartender during all hours of operation for the purposes of serving alcoholic beverages directly to alcohol consuming customers. Alcoholic beverages are available to customers at all times whether or not they choose to eat a meal or not.
 - d. The bar remains routinely open for several hours after the kitchen is either completely closed or only limited food service is available.
 - e. Based upon the establishments name and presentation to the general public, a customer can reasonably expect a bar, pub or nightclub type establishment. The front exterior of the building consists of dark wooden finishing with multiple window /door panes and several signs advertising the name of the establishment “Thirsty Scholar Pub”. There are at least three ornamental exterior signs featuring “Bass Ale”.
 - f. The interior of the establishment features a décor and atmosphere typical of a bar or pub. . The open area consists of a variety of seating arrangements including a fully stocked bar with bar stools, high tables with high stools in addition to several wooden tables and booths with chairs and benches. There are numerous signs, ornaments, artwork and flags displayed within the establishment that promote various types of alcoholic beverages.
 - g. Although there was conflicting testimony, this establishment derives a significant portion of its revenue (at least 50%) from the sale of alcoholic beverages.
- 6) Appellant’s position that this establishment is “principally a restaurant” and therefore exempt from the provisions of M.G.L.,s. 26G1/2 is without merit. Although the facility currently provides an attractive assortment of food items, this facility is clearly and legally designed, used and marketed as a pub or bar with a legal capacity of 100 or more persons and is therefore within the scope of the sprinkler provisions of section 26G1/2.

G) Decision and Order

For the foregoing reasons, this Board unanimously **upholds** the Order of the Somerville Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2. Sprinklers shall be installed in accordance with the timeline stated in section 11 of chapter 304 of the Acts and resolves of 2004 (completed installation by November 15, 2007; see copy of section 11 attached hereto).

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Paul Donga (Vice Chair)	In Favor
Stephen D. Coan, State Fire Marshal	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Peter E. Gibbons	In Favor
John J. Mahan	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E., Chairman
Chairperson

Dated: June 22, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO: Gerald Brennan and Patrick Cross, 70 Beacon Street, Somerville, Massachusetts 02143 **and 1st Class Mail, Postage Pre-paid to:** Deputy Chief James C. Hodnett, Somerville Fire Department, 255 Somerville Avenue, Somerville, Massachusetts 02143.

SECTION 11. Any owner of a building, structure or portions thereof subject to the provisions of the second paragraph of [section 26G 1/2 of chapter 148](#) of the General Laws shall submit plans and specifications for the installation of an adequate system of automatic sprinklers to the head of the fire department and the local building inspector or inspector within 18 months of the effective date of this act and shall install an adequate system of automatic sprinklers within 3 years of such effective date. The head of the fire department may allow a reasonable extension of time, not to exceed 1 year, to comply with said section 5 if the owner has timely submitted the required plans and specifications, has entered into an existing contract for the installation and clearly documents or shows that he did not cause the delay of installation.